

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 5, 2006

To: The Commission
(Meeting of April 13, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2390 (Utilities and Commerce) - CPUC: Issuance of final order: means and definition of date of issuance.**
As Introduced February 23, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support (CPUC sponsored).

SUMMARY OF BILL:

This bill would permit official notification to parties of the issuance of a final decision by the California Public Utilities Commission (CPUC) to be by electronic means (providing an e-mailed document or appropriate web link) in addition to currently authorized postal mailing, and would clarify the definition of “date of issuance” to provide a consistent date irrespective of the means of notification utilized.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This CPUC sponsored measure will permit formal transmission methods to include electronic means, which will conform to the actual practice of most parties who rely on final decisions available electronically days ahead of postal delivery. This will continue the CPUC’s efforts to utilize appropriate technology to improve delivery of information and services, while reducing costs to the Commission by requiring that paper copies are provided only to those who request them. Many parties will either print out their own copy or not require a paper copy for their needs. It will reduce waste by eliminating the production of unnecessary paper copies of documents.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

None at this time.

DIVISION ANALYSIS (ALJ Division):

Existing law establishes the formal issuance of a Commission decision by reference to the date on which the decision is “mailed”. The date of issuance is of critical significance as the trigger date from which various intervals are counted in determining the timeliness of an application for rehearing (§§ 1731(b)(1) and (c)) or a petition for review by the Court of Appeals or the Supreme Court (§ 1756).

This bill will allow the Commission to also disseminate final decisions by means of e-mails of either the entire text of a decision or a link to a web location from which the decision can be obtained. It also establishes, irrespective of the means of distribution used (mailing of decision, mailing of notice of availability of decision, e-mailing of decision or e-mailing of web link to decision) a consistent “date of issuance” as the “date that is stamped on the official version of the order or decision” (§1731(b)(4)).

The problem addressed by this bill is real. We believe that most participants in all but our smallest proceedings (and even many of those) have internet access. The Commission currently web publishes all official documents including all final decisions after approval by the Commission. Web publishing occurs on the same day as the physical mailing of final Commission decisions. We expect that many parties retrieve decisions from the Commission’s web site when they become available rather than awaiting the mailed copy. As a result, for many participants the physically mailed copy is either redundant or unnecessary.

The physical mailing of decisions, particularly decisions that are either physically large or must be sent to large numbers of interested parties or both, is also a burden on the Commission staff, occasionally resulting in the delay of issuance of decisions while reproduction and postal mailing steps are taken. The resulting financial burden of reproduction and mailing is not insignificant.

Absent this legislation the Commission believes it cannot substitute electronic mail delivery for postal mail delivery. This bill would fully eliminate this problem.

PROGRAM BACKGROUND:

See discussion above.

LEGISLATIVE HISTORY:

Prior legislation has directed and/or authorized the use of electronic means for the intake or distribution of official documents, including requirements that the Commission publish all official documents on our web site and that provision be made for the filing of complaints by electronic means.

FISCAL IMPACT ON THE CPUC:

Unknown savings through the utilization of e-mail for the distribution of final decisions.

STATUS: This bill will be heard by the Assembly Utilities and Commerce Committee on Monday, April 17, 2006.

SUPPORT/OPPOSITION: (as of 3/29/06)

Support: CPUC (Sponsor)

Opposition: None.

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Date: April 5, 2006.

BILL LANGUAGE:

BILL NUMBER: AB 2390 INTRODUCED
BILL TEXT

INTRODUCED BY Committee on Utilities and Commerce (Levine (Chair),
Bogh (Vice Chair), Blakeslee, Cohn, De La Torre, Jerome Horton,
Montanez, and Ridley-Thomas)

FEBRUARY 23, 2006

An act to amend Sections 1731, 1756, 1768, and 1769 of the Public
Utilities Code, relating to the public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2390, as introduced, Committee on Utilities and Commerce
Public Utilities Commission: rehearings and judicial review.

(1) Existing law, after any order or decision has been made by the Public Utilities Commission, authorizes any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, to apply for a rehearing with respect to any matter determined in the action or proceeding and specified in the application for rehearing. Existing law prohibits a cause of action arising out of any order or decision of the commission from accruing in a court to a corporation or person unless the corporation or person has filed an application to the commission for a rehearing within a specified amount of time after the date of issuance of an order or decision. Existing law defines date of issuance, for the purposes of these provisions, to mean the date on which the commission mails the order or decision to the parties to the action or proceeding.

This bill would require the commission to notify the parties of the issuance of an order or decision by either mail or electronic transmission, as specified. The bill would require the commission to adopt rules to implement this provision. The bill would revise the definition of "date of issuance" to mean the mailing or electronic transmission date that is stamped on the official version of the order or decision.

(2) Existing law generally authorizes an aggrieved party to petition for a writ of review of an order or decision of the commission within 30 days after the commission issues its decision denying an application for a rehearing, or, if the commission grants the application, within 30 days after the commission issues its decision on rehearing. Existing law specifies that the issuance of a decision or the granting of an application, for the purposes of these provisions, is to be construed to have occurred on the date on which the commission mails the decision or the granting of the application to the parties to the action or proceeding.

This bill would specify that the issuance of a decision or the granting of an application is to be construed to have occurred on the date of issuance, as defined, for the purposes of these provisions and certain other provisions setting forth judicial review procedures

for specified orders or decisions of the commission.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) (1) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. ~~For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action or proceeding.~~

(2) The commission shall notify the parties of the issuance of an order or decision by either mail or electronic transmission. Notification of the parties may be accomplished by one of the following methods:

(A) Mailing the order or decision to the parties to the action or proceeding.

(B) Mailing a notice of availability of the order or decision to the parties to the action or proceeding that identifies both an Internet Web site location and a commission representative from whom the order or decision is readily available.

(C) Transmitting an electronic copy of the official version of the order or decision to the parties to the action or proceeding who have provided an electronic mail address to the commission.

(D) Transmitting a link to an Internet Web site where the official version of the order or decision is readily available to the parties to the action or proceeding who have provided an electronic mail address to the commission.

(3) The commission may adopt rules under its Rules of Practice and Procedure to implement paragraph (2).

(4) For the purposes of this article, "date of issuance" means the mailing or electronic transmission date that is stamped on the official version of the order or decision

(c) No cause of action arising out of any order or decision of the

commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001-02 First Extraordinary Session that (1) relates to the determination or implementation of the department's revenue requirements, or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the Department of Water Resources, the expedited review of order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division, shall accrue in any court to any corporation or person unless the corporation or person has filed an application with the commission for a rehearing within 10 days after the date of issuance of the order or decision. The Department of Water Resources shall notify the commission of any determination pursuant to paragraph (2) of this subdivision prior to the issuance by the commission of any order or decision construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001-02 First Extraordinary Session. The commission shall issue its decision and order on rehearing within 20 days after the filing of the application.

SEC. 2. Section 1756 of the Public Utilities Code is amended to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date ~~when the commission mails the decision or grant to the parties to the action or proceeding~~ of issuance, as defined in subdivision (b) of Section 1731 .

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

(f) For purposes of this section, review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme

Court.

(g) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

SEC. 3. Section 1768 of the Public Utilities Code is amended to read:

1768. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001-02 First Extraordinary Session that (1) relates to the determination or implementation of the revenue requirements of the Department of Water Resources or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the department, the expedited review of an order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division:

(a) Within 30 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 30 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001-02 First Extraordinary Session shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date ~~when the commission mails the decision or grant to the parties to the action or proceeding~~ of issuance, as defined in subdivision (b) of Section 1731 .

(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

SEC. 4. Section 1769 of the Public Utilities Code is amended to read:

1769. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4:

(a) Within 10 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 10 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date ~~when the commission mails the decision or grant to the parties to the action or proceeding~~ of issuance, as defined in subdivision (b) of Section 1731 .

(d) The Legislature hereby declares that if a writ issues in an action under this section, delay in the determination of the writ will delay implementation of a securitized financing, thereby diminishing approximately \$1 billion of total savings to Pacific Gas and Electric Company's ratepayers that might be achieved if a securitized financing were implemented immediately. Therefore, to maximize ratepayer benefits, review under this section should be expedited.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

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